

FILED
JANUARY 31, 2008

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ABDIFATAH HERSI)
A078-775-426)

Plaintiff,)

v.)

Ruth A. Dorochoff, District)

Director of the USCIS,)

Department of Homeland)

Security; Michael Chertoff,)

Secretary, Department of)

Homeland Security;)

Michael B. Mukasey,)

Attorney General,)

U.S. Department of Justice)

&)

Robert S. Mueller,)

Director, Federal Bureau of)

Investigation)

Defendants)

No.

08 C 692

**JUDGE DER-YEGHIAYAN
MAGISTRATE JUDGE DENLOW**

COMPLAINT FOR HEARING ON NATURALIZATION APPLICATION

UNDER 8 USC SEC. 1447(B)

Plaintiff, by his undersigned attorney, complaining of Defendants, allege as follows:

1. Plaintiff is an individual and permanent resident of the United States who resides within the jurisdiction of this court. Plaintiff's claim to naturalization arises under 8 U.S.C. Sec. 1447(b).
2. Plaintiff is a resident of Chicago, Illinois.

3. Plaintiff was granted his permanent residency on May 23, 2000. *See* Exhibit 1.
4. Any named defendant is sued in his official capacity only.
5. Ruth A. Dorochoff, the Defendant herein, is the District Director of the United States Citizenship and Immigration Services (USCIS) and is sued herein in her official capacity. Defendant is responsible for the grant or denial of naturalization applications filed within the Chicago USCIS District Office. The Federal Bureau of Investigation ("FBI") is named as a party to this action because they conduct a name/security check for the DHS as part of the application process.
6. The Court has jurisdiction in this action pursuant to 8 U.S.C. Sec. 1447(b), 28 U.S. C. Sec. 2201 as well as 28 U.S.C. §1331 & §1361.
7. On March 31, 2005 Plaintiff submitted an application for naturalization to the Defendant. On June 19, 2006 the Defendant and/or his designated agent interviewed Plaintiff on his application. During the time of the interview the Plaintiff received Form N-652, "Naturalization Interview Results", indicating that he had passed the tests for English and U.S. history and government and that a decision cannot be made on his application due to the pending background check. *See* Exhibit 2.
8. Plaintiff maintains that he meets all statutory requirements for eligibility for naturalization.
9. On September 24, 2007 Plaintiff made an inquiry to the USCIS concerning his application for naturalization and received a response stating that his case was held pending the background investigation. *See* Exhibit 3.

10. The application for naturalization has been pending for 19 months since the time of examination. It is imperative that Plaintiff's application be adjudicated as soon as possible, because the delay by the DHS and FBI is unreasonable, and the Plaintiff is precluded from enjoying the rights and responsibilities of being a Citizen of the United States due to agency inaction. Furthermore, Plaintiff is married to a foreign born woman who is currently residing in Uganda. The delay in processing Plaintiff's naturalization case results in the delay of his wife's eligibility for an immediate relative immigrant visa to join Plaintiff in the United States.
11. Plaintiff has no other adequate remedy for the agency failure to complete and adjudicate the application for citizenship.
12. More than 120 days have passed since the Plaintiff's interview and "examination" in his naturalization application and the Defendant has failed to make a determination under 8 U.S.C. Sec. 1446 of the Plaintiff's naturalization application. The Defendant's failure to make a determination on Plaintiff's application for naturalization within the 120-day statutory period from the date of examination allows Plaintiff to bring the matter to this Court for a hearing pursuant to 8 U.S.C. Sec. 1447(b).
13. Plaintiff desires a judicial determination of his naturalization application and a declaration that he is entitled to be naturalized as a Citizen of the United States.

WHEREFORE, the Plaintiff prays that:

1. The Court will hear Plaintiff's case and render a judgment and determine the matter of naturalization, or in the alternative remand the matter with appropriate instructions to the USCIS to determine the matter.
2. The Court grant such further relief, including attorney fees and costs of this action, as may be just, lawful, and equitable in the premises.

Respectfully submitted,

MARK S. DAVIDSON
Attorney for Plaintiff

By: s/Mark S. Davidson
MARK S. DAVIDSON
Davidson & Schiller, LLC
One North LaSalle Street, Suite 2400
Chicago, Illinois 60602
Telephone: (312) 499-9000

PERMANENT RESIDENT CARD

NAME HERSI, ABDIFATAH F

INS A# 078-775-426

Birthdate 10/15/78 Category RES Sex M

Country of Birth Somalia

CARD EXPIRES 07/31/12

Resident Since 05/23/00

C1USA0787754263LIN0124753811<<
7810152M1207312SOM<<<<<<<<<<<<<2
HERSI<<ABDIFATAH<F<<<<<<<<<<<<<

EXHIBIT 1

Department of Homeland Security
U.S. Citizenship and Immigration Services

N-652, Naturalization Interview Results

A#: 078 775 426

On 06/19/2006, you were interviewed by USCIS officer KEIPER

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the tests of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to _____ speak/ _____ read/ _____ write English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on Form N-14.
- ☒ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your _____ English ability/ _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.

A) _____ Congratulations! Your application has been recommended for approval. At this time, it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) ☒ A decision cannot yet be made about your application.

It is very important that you:

- ☒ Notify USCIS if you change your address.
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

~~Security check~~
Security check - pending

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS has not made a determination on your application within 120 days of the date of your examination.

EXHIBIT 2



U.S. Citizenship
and Immigration
Services

June 5, 2006

Dear :

Although we have completed the interview on your application we cannot make a decision on your case because the required security checks are incomplete. Once the background investigation is completed we will make and inform you of our decision as quickly as possible.

We understand that you may be frustrated by this news. However, in order to fulfill its mission to provide immigration benefits and services to the public, USCIS must balance its obligations to the individual applicant against its obligations to the public as a whole. Consequently, we have adopted enhanced security check procedures.

Given the significance of immigration benefits and the number of applications submitted, it is inevitable that some applications will require more attention than others. Some factors that may lead to delays are the volume of record checks, the number of records to be checked and the processing of common names. For the vast majority of applicants, USCIS is able to quickly determine whether there is any criminal or security related eligibility issues. In the remaining cases, often referred to as "pending," a match of some kind has been identified and must be resolved before a decision can be made on the case. However, a match does not always lead to a denial of the application. USCIS does not share information regarding the specific nature of the match or the nature or status of any investigation with applicants or their representatives.

We remain committed to processing cases within a reasonable period of time. In some cases, however, unresolved security concerns will create delays. We ask for your patience in such cases, and in return we promise to continue to seek resolution as quickly as possible in each individual case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ruth Dorochoff".

Ruth Dorochoff
District Director

U.S. Department of Homeland Security
USCIS
101 West Congress Parkway
Chicago, IL 60605



**U.S. Citizenship
and Immigration
Services**

Wednesday, September 26, 2007

ABDIFATAH HERSI
PO BOX 60009
CHICAGO IL 60660

Dear Abdifatah Hersi:

On 09/24/2007 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

| | |
|---|--|
| Caller indicated they are: | Applicant or Petitioner |
| Attorney Name: | Information not available |
| Case type: | N400 |
| Filing date: | 03/31/2005 |
| Receipt #: | LIN*000766366 |
| Beneficiary (if you filed for someone else): | Information not available |
| Your USCIS Account Number (A-number): | A078775426 |
| Type of service requested: | Other Outside Normal Processing Times |

The status of this service request is:

The processing of your case has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your background remains open.

Until the background investigation is completed, we cannot move forward on your case. These background checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on this case as soon as the background checks are complete. If you do not receive a decision or other notice of action from us within 6 months of this letter, please contact us by calling our customer service number provided below.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services

U.S. CIS - 09-26-2007 09:35 AM EDT - LIN*000766366

EXHIBIT 3